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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/315,688 05/20/99 SHANBROM

E 38786.00069

EXAMINER

IM62/0627

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ART UNIT

PAPER NUMBER

1744

DATE MAILED:

06/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/315,688

Applicant(s)

Shanbrom

Examiner

Kaj Olsen

Group Art Unit

1744



☒ Responsive to communication(s) filed on May 20, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-5 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility.

The claims are drawn to a method of determining the level of antioxidants in a sample where the change in the measure of iodide ions in a mixture "corresponds to the level of antioxidant" (claims 1, 4, and 5). To accomplish said goal, applicant demonstrates the use of a povidone-iodine complex which presumably oxidizes the antioxidant within the sample releasing measurable iodide ions. However, the references Alexander and Coetzee demonstrate that said complex is an oxidizing agent for a number of possible constituents which could be present in samples including unsaturated fatty and amino acids (see Alexander). This clearly demonstrates that the said complex would not be selective to the oxidation of just antioxidants, that a measured change in concentration of iodide ions would be susceptible to any number of chemical interferants, and said change in concentration would not necessarily correspond to a change in the level of antioxidant. Applicant has demonstrated the device by measuring the iodide concentration after various samples were exposed to the complex and utilizes the concentrations

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as a correspondence to antioxidant levels, but because none of the examples compare a sample having antioxidant levels with said same sample minus the antioxidant (i.e. a blank containing all the potential interferants), it is unclear whether the concentrations as measured in these samples indicate the level of just antioxidants or the level of total generally oxidizable constituents within the sample. Given Alexander's suggestion that the complex is reactive to constituents which would not be considered antioxidants, it is unclear how the sensor would be responsive to just antioxidants in the complex and diverse samples being demonstrated by the applicant or samples which would be within the scope of the claims.

In addition to the absence of any showing of calibration with respect to possible interferants, there is also no showing of calibration with respect to the different antioxidant species being measured. The specification is not enabling for what the applicant considers to be an antioxidant (applicant has merely provided examples of what the method is believed to be sensitive towards), nor is the specification enabling to whether the technique is actually sensitive to those antioxidants. This appears to be important because Alexander demonstrates that both the degree of the oxidation and the rate (time) of the oxidation depend on the particular constituent being reacted with the complex. In the absence of any chemical library showing the sensitivity of the applicant's method to the various particular antioxidants presumed to be providing the measured iodide change, it is unclear what antioxidants this technique is even sensitive towards.

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3. Claims 1-5 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cheregi et al (full reference), Chen and Motonaka et al (CAS bib and abstract only) are also provided. The complete references will be available in response to this office action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (703) 305-0506.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920.

When filing a fax in Group 1700, please indicate in the header "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of this application. This will expedite processing of your papers. The fax number for this Group is (703) 305-7719.

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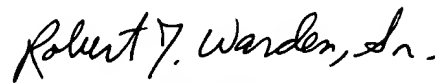
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0661.

Kaj K. Olsen, Ph.D.



Patent Examiner

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ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700